

## ANALYSIS

Section-by-section comments follow each new code section in an attached version of the entire revision.

The substantive changes have been summarized in the comments below, which includes a reference to the code section and page number in the 4/22/02 version of SB 1423. Substantive changes made by the code revision include the following:

1. The scope of emergency awards has been expanded to encompass any type of compensation authorized by this article. [13952.5, p. 5]

The Board believes that there is no good reason to limit emergency awards to the specified list of reimbursable losses. Rather, the determining factor should be whether an immediate need for compensation exists. In addition, the provision designating staff persons and agencies to whom the Board may delegate authority for authorizing an emergency award is being proposed for expansion to include victim service providers other than governmental agencies and victim witness centers, including but not limited to domestic violence shelters. This change would not result in any additional costs to the Fund because the cost of the emergency award would be deducted from the final amount of assistance granted to the victim. If the emergency award results in an amount greater than the final amount of assistance granted by the Board, then any excess amount would be reimbursed by the victim to the Board according to an agreed upon schedule.

**No fiscal impact.**

2. The provisions authorizing an extension of time for filing for good cause in particular circumstances and for particular periods of time (e.g., existing sections 13961.01 and 13961.05) have been substantially consolidated, simplified and redrafted to give the Board discretion in resolving the question of whether good cause exists for permitting a late filing. [13953(b) and (c), pp. 6-7]

Over the years, various interest groups have secured specific exceptions through legislation to the code sections defining what constitutes good cause for filing extensions. While the Board is supportive of these exceptions, as stated in current law these exceptions are very complex and cumbersome, which makes it difficult for staff to apply and have contributed to recent backlogs in processing applications. Consolidating and simplifying existing law by allowing the Board discretion will help staff process claims in a more efficient and timely manner. The Board is committed to including all the exceptions in current law when it promulgates regulations pursuant to the section. In addition, giving the Board more discretion will benefit victims by allowing the Board to decide in favor of the victim if a particular reason for a good cause extension exists but is not listed in statute.

**Fiscal impact: Negligible. See below**

3. If a minor seeks compensation for medical, medical-related, psychiatric, psychological or other mental health counseling related services and the minor is authorized by statute to consent to such services, the minor may verify the application for compensation under penalty of perjury. [13952 (b), p. 4]

The University of California, San Francisco and San Francisco General Hospital, which are operating a Victim Recovery Center at SFGH, have requested that minors be allowed to verify an application for reimbursement without parental approval if treatment otherwise would be refused. This change conforms to existing law in the Welfare and Institutions Code that allows a minor to receive treatment without parental consent and does not add any benefit beyond what a minor victim can currently be compensated for with parental consent, especially in cases of incest or child molestation.

**Fiscal impact: Unknown, but minor. See below.**

4. Currently, relative caregivers are eligible as a derivative victim. However, if a relative caregivers sign for a minor or incompetent victim, he or she must be a legal guardian in order for the minor victim to receive benefits. If a relative caregiver submits an application on behalf of a minor victim but is not the legal guardian, Board staff helps the relative caregiver to become the legal guardian by referring to organizations that can provide pro bono legal advice. Although expanding the group of persons who can verify an application on behalf of minor or incompetent victim can be considered a substantive change, it will not result in any fiscal impact because in most cases the relative caregiver does become the legal guardian because it is a legal formality if the relative caregiver already has custody of the victim. [13952 (b) and (d), pp. 4-5]

**Fiscal impact: None.**

5. Current law allows reimbursement for in-patient mental health counseling for victims, but not for derivative victims. The Board believes that in-patient mental health counseling should be available for derivative victims (especially survivors of murder victims) as well as victims, if they are a danger to themselves or others and it is determined that they need this service to recover from the crime. Thus, in-patient mental health counseling for victims has been deleted from the “medical expenses” category in current law and added to the “dire and exceptional” circumstances for both victims and derivative victims. [13957(a)(2)(C), p. 14]

Based on the declining number of claims for in-patient mental health counseling received in past years, the Board estimates that this benefit would apply to very few derivative victims. The Board’s consulting psychologist reviews all the bills for in-patient mental health counseling prior to payment, which would prevent abuse by treatment centers. Moreover, based on past experience, most victims rely on the help and support of family, friends and use out-patient mental health counseling as opposed to hospitalization for mental health counseling.

**Fiscal impact: Minor. See below.**

6. Adding a provision to allow the Board to approve additional licensed mental health professionals or unlicensed professionals who provide services to benefit victims, practice within the scope of their profession, have the requisite training, and are properly supervised by a licensed professional, for reimbursement would alleviate the need to amend existing law every time the Board determines that a professional could provide a service needed by the victim. This provision would also allow the Board to place any restriction or limitation on the reimbursement for services provided by these professionals, which would control the potential for abuse of this provision. In short, this provision would give the Board discretion by allowing them to add licensed providers without going through the legislative process and would

streamline the existing code section listing the providers who may be reimbursed by the Fund. [See 13957(a)(1)(D)(ii), p. 14]

Although this would expand the types of mental health providers available to victims, the Board's discretion would be limited to licensed providers, and it would not affect the cap of the amount of money allowed for out-patient mental health counseling. Because this provision is permissive and gives the Board discretion, any fiscal impact could be controlled by the Board based on the availability of resources from the Fund.

**Fiscal impact: Undeterminable, but minor. See below.**

7. The section in existing law, GC section 13965.1(c), which states that "any change in law resulting from the addition or amendment of this section [income/support loss] shall be applied prospectively to claims based on the date of the crime on which the claim for loss of income or support is based, has been eliminated from the revised section on income/support loss [13957.5, pp. 17-18] and relocated with changes to the subsection dealing with Board hearings. [13959(d), p. 22]

This change would alleviate workload for staff by eliminating the need to determine whether the victim or derivative victim should receive wage/support loss for 2, 3 or 5 years by researching legislation in effect when the crime took place. If the law is silent on this issue, it could be resolved through board hearings as described in 13959(d) or through regulation. This change will help to ensure that victims who are similarly situated and apply for compensation on the same date are treated alike and receive the same benefits.

For example, if applications were received from two victims of similar crimes under similar circumstances in January of 2001, but the crime on one application occurred on December 29<sup>th</sup>, 2000, and the crime on the other applications occurred on January 2, 2001, both crime victims *should* receive similar benefits. However, current law requires that benefits be bound to the statute in effect on date the crime occurred, so in this case, the victim of the crime in December of 2000 would be limited to 3 years of wage loss while the victim of the crime occurring in January of 2001 would receive 5 years of wage loss.

The legislative intent of this change is to provide equity in providing benefits for similarly situated claims. There is no way to determine what future benefits will be, therefore the cost of this change cannot be determined. However, the fiscal effects of new benefits are taken into account as they go through the legislative process.

**Fiscal Impact: See below.**

8. Existing law under GC 13965.3 allows the Board to establish expedited payment contract with nonprofit agencies with extensive experience in providing mental health services to victims of crime who are minors and their families, which has utilized reimbursement from the victim's Restitution Fund at a significant level on a regular and constant basis. Upon request of a nonprofit agency, the Board determines whether the nonprofit agency is a qualified provider.

Expanding the Board's authority to establish expedited payment contracts with any qualified provider of mental health services, such as facilities that treat domestic violence and sexual assault victims, will make the process of paying mental health service providers more efficient,

effective and economical. [13957.9, p.20-21] This change does not affect the amount of payment to qualified providers. Expediting payment to providers would translate into increased and more readily available treatment to victims, especially in regard to small nonprofit and community organizations. Allowing expedited payment through contracts to any qualified provider could result in a cost savings due to a decreased workload.

**Fiscal Impact: Absorbable and could result in a cost savings.**

9. Existing law in GC section 13968 (b) includes language that is both over-inclusive and under-inclusive in mandating the display of certain posters in hospitals and requiring the board to send information to all physicians in the state. This subsection has been eliminated and new language is proposed in subdivision 13962(a), which imposes a general duty on the board to publicize the existence of the crime victim compensation program through a variety of agencies that interact with victims. [13962(a), p.23]

Costs can be absorbed by existing efforts for providing outreach to victims, victim providers and advocates, and the general public. This is an activity that the Board is currently pursuing and any increase in workload will be absorbed by existing staff and resource levels.

**Fiscal Impact: Minor and absorbable. See below.**

10. Existing sunset dates have been deleted from legislation governing the VCP, except for urgency legislation passed to benefit the victims and derivative victims of the September 11<sup>th</sup> terrorist attacks, and sunset dates for pilot projects, but all other sunset dates for existing code sections have been eliminated. When legislation expanding the scope of existing benefits or adding new benefits came before the Legislature, sunset dates were often included as a means of providing oversight on the impact those benefits would have on the Fund. This entailed adding sunset dates to the entire section in which a particular benefit was added or expanded was located, which often resulted in repeating the entire code section two or more times. Thus, existing law covering the VCP contains several repetitions of very long codes sections, such as 13960 or 13965, which makes the law covering the VCP complicated and confusing.

Specifically, the following bills established the following sunset dates affecting these specific code sections with provisions that are currently due to sunset on January 1, 2004.

- Chapter 697, Statutes of 1998 (AB 535—V. Brown) included the following provisions with sunset dates:
  - GC section 13960(a)(1)(E), which added primary caretakers of a minor victim who was not the primary caretaker at the time of the crime as a derivative victim;
  - GC section 13961.01, which added addition good cause extension beyond 3 years for filing a late application;
  - GC section 13964(e), which instructed the Board to adopt guidelines for accepting claims on domestic violence that take into account various factors in evaluating a victim's cooperation with law enforcement.
- Chapter 895, Statutes of 1998 (AB 645—Escutia), which included the following provisions with sunset dates:

- GC section 13960(a)(2), which included a resident of another state as a derivative victim if that individual met the same qualifications as derivative victim who is a California resident;
  - GC section 13960(c)(5), which added vehicular manslaughter to the list of qualifying crimes for victim compensation.
  - GC sections 13960(b)(1), 13964(a)(1) and 13965(a)(1)(E), which added the crime of unlawful sexual intercourse as defined in Penal Code section 261.5(d) as a compassable injury where physical injury is presumed if a victim sustains emotional injury, excluded willing participation as grounds for denial of a claim filed under PC section 261.5(d), and provided up to \$3,000 in mental health counseling for a victim of PC section 261.5(d).
- Chapter 700, Statutes of 1998 (AB 1803—Lempert), which included the following provisions with sunset dates:
    - GC section 13960(b)(2) added child abduction as a compassable injury if the deprivation of a child has endured for not less than 30 days, for which the child shall be considered as the primary victim;
    - GC section 13960(b)(3) added a child who has witnessed domestic violence as a victim who may have been presumed to have sustained physical injury.

All of these provisions were either supported or sponsored by the Board, have been built into the Board's existing budget, and are provisions the Board would otherwise like to see continued.

**Fiscal impact: Minor. See Below.**

## FISCAL IMPACT

1. Expanding the scope of emergency awards will not result in any fiscal impact. This change would not result in any additional costs to the Fund because the cost of the emergency award would be deducted from the final amount of assistance granted to the victim. If the emergency award results in an amount greater than the final amount of assistance granted by the Board, then any excess amount would be reimbursed by the victim to the Board according to an agreed upon schedule.
2. Consolidating and simplifying “good cause” extensions for filing an application after the deadlines would result in a negligible cost to the Fund. Any potential increase in the number of claims filed after the three-year deadline would be negligible relative to the historical increase in applications due to outreach, changes in population, etc.
3. Allowing a minor to certify his or her own claim without a signature from a parent or legal guardian would result in unknown, but insignificant costs. This change does not entail any compensation for treatment beyond what a minor is already eligible to receive with a parent’s signature and is within existing law in the Welfare and Institution Code that allows a minor to receive treatment without parental consent. Cost estimates cannot be determined because it is unknown how many providers turn away minors for treatment or absorb the costs because minors could not get a parent’s signature. Moreover, if the minor ended up in state custody, they would eventually get reimbursed from the Fund for treatment.
4. Currently, relative caregivers are eligible as a derivative victim. However, if a relative caregiver signs for a minor or incompetent victim, he or she must be a legal guardian in order for the minor victim to receive benefits. If a relative caregiver submits an application on behalf of a minor victim but is not the legal guardian, Board staff helps the relative caregiver to become the legal guardian by referring to organizations that can provide pro bono legal advice. Although expanding the group of persons who can verify an application on behalf of a minor or incompetent victim can be considered a substantive change, it will not result in any fiscal impact because in most cases the relative caregiver does become the legal guardian because it is a legal formality if the relative caregiver already has custody of the victim. [13952 (b) and (d), pp. 4-5]
5. Allowing in-patient mental health counseling for derivative victims as well as victims under the dire and exceptional circumstances clause would result in no more than \$250,000 annual cost to the Fund per year. During the 2000/2001 fiscal year the Board received 97 bills for inpatient care for victims and paid out \$161,276. As noted above, the Board’s consulting psychologist reviews all the bills for in-patient mental health counseling prior to payment, which would prevent abuse by treatment centers providing this type of treatment to victims simply because they could get reimbursed. In light of an observed decline in the submission of bills for this type of treatment over the past few years, the Board expects no more than a 50 percent increase over the past year actual total for 2000/2001, which would cost the Fund approximately \$241,914 annually.
6. Allowing the Board permission to approve additional licensed mental health professionals or unlicensed professionals who provide treatment within the scope of their field and are supervised by licensed professionals expands the types of treatment available to victims but does not affect the current caps on reimbursement for outpatient mental health counseling. In

addition, this authority is discretionary, which would allow the fiscal impact to be controlled by the Board based on the perceived availability of resources from the Fund. The fiscal impact cannot be determined but will be insignificant.

7. The fiscal effect of applying the law regarding income/wage loss benefits on the date an application is submitted to as opposed to the date that the crime was committed cannot be determined because there is no way to determine what future benefits will be. However, the fiscal effects of new benefits are taken into account as they go through the legislative process, which will entail a fiscal analysis on the impact of the change on the Fund. And, as noted above (see #6), the amount paid out on income/support loss is a relative small percentage of the total paid out on all benefits. The legislative intent of this change and the addition of the section that states “the Board shall apply the law in effect as of the date an application was submitted” [section 13959(d) in the revision on p. 22] is to provide equity in benefits for similarly situated claims. The Board assumes that any additional costs, will be offset, in part, by a decreased workload because the research involved in determining the legislation in effect at the time of the crime will be eliminated.
8. Expanding the Board’s authority to establish expedited payment contract with any qualified provider, such as facilities that treat domestic violence and sexual assault victims will not affect the amount of payment to qualified providers. Rather, it will allow for a more efficient, effective and economical payment that could result in a cost savings due to a decreased workload.
9. The imposition of a general duty on the part of the Board to publicize the existence of the crime victim compensation program is an ongoing cost that can be absorbed by the Board’s existing resources dedicated to outreach and public affairs. In other words, this is an activity that the Board is currently pursuing and any increase in workload will be absorbed by existing staff and resource levels.
10. As noted above, the following bills established the following sunset dates affecting these specific code sections with provisions that are currently due to sunset on January 1, 2004. All of these sections became effective on January 1, 1999. The fiscal analyses of these provisions at the time they were enacted were built into the Board’s budget and have been compared, when possible, with what these provisions have actually cost the Board since their enactment. Some provisions cannot be separated out from a general category, so the specific cost difference cannot be identified.
  - Chapter 697, Statutes of 1998 (AB 535—V. Brown) included the following provisions with sunset dates:
    - GC section 13960(a)(1)(E), which added primary caretakers of a minor victim who was not the primary caretaker at the time of the crime as a derivative victim, was projected to cost the Board between .5 million and 2 million dollars annually. This provision cannot be separated out from claims filed by derivative victims who were primary caretakers of a minor at the time of the crime, so the actual cost is unknown.
    - GC section 13961.01, which added addition good cause extension beyond 3 years for filing a late application, was estimated to cost the Board .5 million dollars annually. The cost of this provision during FY 1999-2000 was \$558,047 and during FY 2000-2001 was \$579,724. The actual cost of this provision for

both fiscal years was slightly above the projected annual cost of \$500,000 per year by between \$60,000-\$80,000 per year.

- GC section 13964(e), which instructed the Board to adopt guidelines for accepting claims on domestic violence that take into account various factors in evaluating a victim's cooperation with law enforcement, was estimated to cost the Board between \$2 million and \$5 million annually. The cost of this provision cannot be separated out by our database, therefore the actual cost is unknown.
- Chapter 895, Statutes of 1998 (AB 645—Escutia), which included the following provisions with sunset dates:
  - GC section 13960(a)(2), which included a resident of another state as a derivative victim if that individual met the same qualifications as derivative victim who is a California resident, was estimated to cost the Board between \$.5 million and \$2 million dollars annually. The actual cost of this proposal was \$588,514 for 1999-2000 and \$802,737 for 2000-2001. If the median of the annual projected costs, \$1.25 million, is compared against the highest annual actual cost of \$802,737 then the projected cost was overestimated by approximately \$450,000.
  - GC section 13960(c)(5), which added vehicular manslaughter to the list of qualifying crimes for victim compensation, was estimated to cost the Board between 1.2 million and 2.5 million dollars annually. The cost of this provision during FY 1999-2000 was \$127,031 and during FY 2000-2001 was \$317, 045. If the median of the projected annual costs, \$1.85 million, is compared against the highest annual actual cost of \$317,045 then the projected cost was overestimated by approximately \$1.5 million dollars.
  - GC sections 13960(b)(1), 13964(a)(1) and 13965(a)(1)(E), which added the crime of unlawful sexual intercourse as defined in Penal Code section 261.5(d) as a compensable injury where physical injury is presumed if a victim sustains emotional injury, excluded willing participation as grounds for denial of a claim filed under PC section 261.5(d), and provided up to \$3,000 in mental health counseling for a victim of PC section 261.5(d), was estimated to cost the Board \$2.5 million annually. The cost of this provision during FY 1999-2000 was \$145,768 and during FY 2000-2001 was \$204,578. If the projected annual cost of \$2.5 million, is compared against the highest annual actual cost of \$204,578, then the projected annual cost of this provision was overestimated by approximately \$2.3 million dollars.
- Chapter 700, Statutes of 1998 (AB 1803—Lempert), which included the following provisions with sunset dates:
  - GC section 13960(b)(2) added child abduction as a compensable injury if the deprivation of a child has endured for not less than 30 days, for which the child shall be considered as the primary victim, was estimated to cost the Board between \$450,000 and \$675,000 annually. The actual annual costs of this provision were \$24,606 for 1999-2000 and \$42,532 for 2000-2001. If the median of the projected annual costs, \$562,500, is compared against the highest actual cost of \$42,532, then the projected annual cost was overestimated by approximately \$.5 million dollars.
  - GC section 13960(b)(3) added a child who has witnessed domestic violence as a victim who may have been presumed to have sustained physical injury, was



estimated to cost the Board between 4.5 and 6.8 million dollars annually. The cost of this provision cannot be separated out on our database, so the actual cost is unknown. However, the cost for claims from all minor victims of domestic violence totaled \$4,583,042 in FY 1999-2000 and \$3,353,121 in FY 2000-2001. The average of the annual actual cost for all minor victims of domestic violence (roughly \$4 million) is approximately \$1 million below the median of the projected annual cost for only those minor victims who witnessed domestic violence (roughly \$5.6 million). In other words, the projected annual cost of the provision for a limited category of minor victims of domestic violence was higher than the actual cost for the entire category of minor victims.

All of the provisions listed above (#10) due to sunset in 2004, were either supported or sponsored by the Board, have been built into the Board's existing budget and are provisions the Board would otherwise like to see continued. Moreover, the actual expenditures for these provisions are approximately \$5 million below the projected annual expenditures that have been built into the budget. The estimated costs of the other substantial revisions of this bill, which total approximately \$242,000, are offset by the savings of approximately \$5 million in the actual annual costs of the provisions due to sunset when compared against their projected costs which are currently built into the Board's annual budget.